



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

**[EPA-R05-OAR-2021-0540; FRL-9201-02-R5]**

**Air Plan Approval; Wisconsin; Redesignation of the Rhinelander  
Sulfur Dioxide Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is redesignating the Rhinelander nonattainment area, which consists of a portion of Oneida County (Crescent Township, Newbold Township, Pine Lake Township, Pelican Township, and the City of Rhinelander), to attainment for the 2010 primary, health-based 1-hour sulfur dioxide (SO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS). EPA is also approving Wisconsin's SO<sub>2</sub> maintenance plan for the Rhinelander area. Wisconsin submitted the request for approval of the Rhinelander area's redesignation and maintenance plan on July 28, 2021. EPA approved Wisconsin's attainment plan for the Rhinelander area on October 22, 2021, with an effective date of December 31, 2021. EPA proposed to approve this action on November 17, 2021, and received no adverse comments.

**DATES:** This final rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2021-0540. All documents in the docket are listed on the [www.regulations.gov](https://www.regulations.gov) website. Although

listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through [www.regulations.gov](http://www.regulations.gov) or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19. We recommend that you telephone Abigail Teener, Environmental Engineer, at (312) 353-7314 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Abigail Teener, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-7314, [teener.abigail@epa.gov](mailto:teener.abigail@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background Information.**

On November 17, 2021, EPA proposed to approve the redesignation of the Rhinelander SO<sub>2</sub> nonattainment area to attainment of the 2010 primary, health-based 1-hour SO<sub>2</sub> NAAQS and to approve Wisconsin's SO<sub>2</sub> maintenance plan for the area (86 FR 64110). An explanation of the Clean Air Act (CAA) requirements, a detailed analysis of the revisions, and EPA's reasons for

proposing approval were provided in the notice of proposed rulemaking and will not be restated here. In the notice of proposed rulemaking, EPA noted that the redesignation would not be finalized until Wisconsin's attainment plan for the Rhinelander area was approved and effective. EPA approved Wisconsin's plan on October 22, 2021, with an effective date of December 31, 2021.

## **II. Public Comments.**

The public comment period for this proposed rule ended on December 17, 2021. EPA received no adverse comments on the proposal.

## **III. Final Action.**

In accordance with Wisconsin's July 28, 2021, request, EPA is redesignating the Rhinelander nonattainment area from nonattainment to attainment of the 2010 SO<sub>2</sub> NAAQS. EPA finds that Wisconsin has demonstrated that the area is attaining the 2010 SO<sub>2</sub> NAAQS and that the improvement in air quality is due to permanent and enforceable SO<sub>2</sub> emission reductions in the area. EPA is also approving Wisconsin's maintenance plan, which is designed to ensure that the area will continue to maintain the SO<sub>2</sub> NAAQS.

In accordance with 5 U.S.C. 553(d) of the Administrative Procedure Act (APA), EPA finds there is good cause for this action to become effective immediately upon publication. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d) (1).

Section 553(d) (1) of the APA provides that final rules shall not become effective until 30 days after publication in the *Federal Register* "except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction." The purpose of this provision is to "give affected parties a reasonable time to adjust their behavior before the final rule takes effect." *Omnipoint Corp. v. Fed. Commc'n Comm'n*, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. EPA has determined that this rule relieves a restriction because this rule relieves sources in the area of Nonattainment New Source Review (NNSR) permitting requirements; instead, upon the effective date of this action, sources will be subject to less restrictive Prevention of Significant Deterioration (PSD) permitting requirements. For this reason, EPA finds good cause under 5 U.S.C. 553(d) (1) for this action to become effective on the date of publication of this action.

#### **IV. Statutory and Executive Order Reviews.**

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d) (3) (E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A

redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a state implementation plan (SIP) submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect,

the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### **List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

*40 CFR Part 81*

Environmental protection, Air pollution control, National

parks, Wilderness areas.

Dated: January 5, 2022.

Debra Shore,  
*Regional Administrator, Region 5.*



For the reasons stated in the preamble, EPA amends 40 CFR parts 52 and 81 as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. Section 52.2575 is amended by removing paragraph (b) introductory text and adding paragraph (c) to read as follows:

**§ 52.2575 Control strategy: Sulfur dioxide.**

\* \* \* \* \*

(c) Approval—On July 28, 2021, Wisconsin submitted a request to redesignate the Rhinelander area, which consists of a portion of Oneida County (Crescent Township, Newbold Township, Pine Lake Township, Pelican Township, and the City of Rhinelander), to attainment of the 2010 primary 1-hour sulfur dioxide standard. As part of the redesignation request, the State submitted a maintenance plan as required by section 175A of the Clean Air Act (CAA). Elements of the section 175 maintenance plan include a contingency plan and an obligation to submit a subsequent maintenance plan revision in eight years as required by the CAA.

**PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES**

3. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

4. Section 81.350 is amended by revising the entry for "Rhinelander, WI" in the table entitled "Wisconsin-2010 Sulfur Dioxide NAAQS [Primary]" to read as follows:

**§ 81.350 Wisconsin.**

\* \* \* \* \*

**Wisconsin-2010 Sulfur Dioxide NAAQS**

**[Primary]**

Designated Area <sup>1</sup>	Designation	
	Date <sup>2</sup>	Type
* * * * *		
Rhinelander, WI	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]	Attainment.
Oneida County (part)		
City of Rhinelander, Crescent Town, Newbold Town, Pine Lake Town, and Pelican Town.		
* * * * *		

<sup>1</sup> Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

<sup>2</sup> This date is April 9, 2018, unless otherwise noted.

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[FR Doc. 2022-00347 Filed: 1/11/2022 8:45 am; Publication Date: 1/12/2022]